



## U.S. DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

#### Docket No. USCBP-2022-0028

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP)-027 Customs Broker Management (CBM) System of Records

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security (DHS) is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the “DHS/U.S. Customs and Border Protection (CBP)-027 Customs Broker Management (CBM) System of Records” and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by docket number USCBP-2022-0028, by one of the following methods:

- Federal e-Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Fax: 202-343-4010.
- Mail: Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528-0655.

**INSTRUCTIONS:** All submissions received must include the agency name and docket number USCBP-2022-0028. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**DOCKET:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions please contact: Debra L. Danisek, (202) 344-1610, [privacy.cbp@cbp.dhs.gov](mailto:privacy.cbp@cbp.dhs.gov), CBP Privacy Officer, U.S. Customs and Border Protection, Ronald Reagan Building, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229. For privacy questions, please contact: Lynn Parker Dupree, (202) 343-1717, [Privacy@hq.dhs.gov](mailto:Privacy@hq.dhs.gov), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C., 20528-0655.

**SUPPLEMENTARY INFORMATION:**

I. Background:

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) proposes to establish a new DHS system of records titled, “DHS/U.S. Customs and Border Protection (CBP)-027 Customs Broker Management.” The records in this system are currently covered under the “DHS/CBP-010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities Systems of Records” (73 FR 77753, December 19, 2008), and historically under the “Treasury/CS.069 Customs Brokers File” (66 FR 52984, October 18, 2001). DHS/CBP is creating this new System of Records to distinguish the Customs Broker application, exam, license, and vetting records from the other records in “DHS/CBP-010 Persons Engaged in International Trade in Customs and Border Protection Licensed/Regulated Activities Systems of Records” (73 FR 77753, December 19, 2008). In addition, the new System of Records provides notice for a new collection and

maintenance of information (i.e., audio and video recordings) from individuals taking the Customs Broker License Exam (CBLE).

Customs Brokers are private individuals, associations, corporations, or partnerships licensed, regulated, and empowered by CBP to assist importers and exporters in meeting federal requirements governing imports and exports. Customs Brokers submit necessary information and appropriate payments to DHS/CBP on behalf of their clients and charge a fee for their service. Customs Brokers must have expertise in the entry procedures, admissibility requirements, classifications, valuation, and applicable rates of duties, taxes, and fees for imported merchandise.

Pursuant to 19 CFR 111.11, an individual is eligible to qualify for a Customs Broker license if he or she (1) is a U.S. citizen on the date of submission of the application referred to in 19 CFR 111.12(a) (OMB Control Number 1651-0034/CBP Form 3124) and is not an officer or employee of the U.S. government, (2) is the age of 21 prior to the date of submission of the application, (3) possesses good moral character, and (4) has passed the Customs Broker License Exam, by attaining a passing grade (75 percent or higher) on the examination taken within the 3-year period before submission of the application.

A partnership is eligible to qualify for a Customs Broker license if they have at least one member of the partnership who is a broker. *See* 19 CFR 111.11(b). An association or corporation is eligible to qualify for a Customs Broker license if (1) they are empowered under its articles of association or articles of incorporation to transact customs business as a broker, and (2) have at least one officer who is a broker. *See* 19 CFR 111.11(c).

DHS/CBP manages the Customs Broker's license program and collects information from applicants when they register to take the Customs Broker License Exam, during the administration of the Customs Broker License Exam, when they apply

for a broker's license, throughout the background investigation processes, through the triennial reporting process, and through continuing education requirements.

The Customs Broker License Exam is offered to applicants twice a year.

Applicants can go to <https://e.cbp.dhs.gov/ecbp/#/main> to register to take the exam. In addition to providing biographic information when registering, applicants are also required to pay a registration fee which is completed through the eCBP portal. Applicants can register for either an in-person or remotely proctored examination. DHS/CBP may video and/or audio record applicants taking either in-person or proctored exams. These recordings allow DHS/CBP to ensure a fair and equitable examination and monitor compliance with examination procedures and requirements.

Once an applicant has successfully passed the exam, the applicant can apply for a Customs Broker license at a CBP facility near where the applicant plans to transact business as a Broker. The Customs Broker license package requires applicants to submit additional biographic information, via CBP Form 3124 (OMB Control No. 1651-0034), and fingerprints are collected at a CBP facility by a CBP Officer and sent to the CBP Trusted Worker Program System (TWP).<sup>1</sup> DHS/CBP will use this information to conduct a thorough background investigation which will include fingerprint analysis, review of character references, as well as reviews of credit reports and arrest records. DHS/CBP will use all available information to determine whether to grant a Customs Broker license. Additionally, DHS/CBP conducts periodic reviews of Broker license holders to determine if a Broker's license should be revoked.

DHS/CBP stores information related to Broker's licenses in the Automated Commercial Environment system (ACE) and on designated CBP servers. Fingerprints

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<sup>1</sup> See U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, PRIVACY IMPACT ASSESSMENT FOR THE TRUSTED WORKER PROGRAM SYSTEM (TWP), DHS/CBP/PIA-062, *available at* <https://www.dhs.gov/privacy-documents-us-customs-and-border-protection>.

collected as part of the background investigation process are stored in the DHS Office of Biometric Identity Management (OBIM) Automatic Biometric Identification System (IDENT). In addition, some information will be stored on DHS contractors' systems to assist in the administration of the Customs Broker License Examination. Any files related to appeals will be transferred to CBP and maintained on a CBP system.

Consistent with DHS' information sharing mission, information stored in the DHS/CBP-027 Customs Broker Management system of records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/CBP may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

On September 10, 2021, CBP published a non-Privacy Act Notice of Proposed Rulemaking (NPRM) in the Federal Register (86 FR 50794) proposing to amend the CBP regulations to require continuing education for individual customs broker license holders (individual brokers) and to create a framework for administering this requirement. The Notice of Proposed Rulemaking provided for a 60-day comment period, which ended on November 9, 2021. Under the notice of proposed rulemaking, individual brokers must earn continuing education credits for a variety of training or educational activities, whether in-person or online, including the completion of coursework, seminars, workshops, symposia, or conventions, and, subject to certain limitations and requirements, the preparation and presentation of subject matter as an instructor, discussion leader, or speaker. Individual brokers must report and certify their compliance with the continuing broker education requirement upon the submission of the Triennial Status Report (TSR). CBP intends to publish a Final Rule which will effectuate the changes described above.

## II. Privacy Act:

The fair information practice principles found in the Privacy Act underpin the statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate personally identifiable information. The Privacy Act applies to information that is maintained in a “system of records.” A “system of records” is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/CBP-027 Customs Broker Management System of Records. Some information in DHS/ CBP-027 Customs Broker Management System of Records relates to official DHS national security, law enforcement, immigration, intelligence, or other homeland security functions. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure DHS’ ability to obtain information from third parties and other sources; to protect the privacy of third

parties; and to safeguard classified information. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/CBP-027 Customs Broker Management System of Records is also published in this issue of the Federal Register.

### **List of Subjects in 6 CFR Part 5**

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend chapter I of title 6, Code of Federal Regulations, as follows:

### **PART 5--DISCLOSURE OF RECORDS AND INFORMATION**

1. The authority citation for Part 5 continues to read as follows:

**Authority:** 6 U.S.C. 101 et seq.; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. In Appendix C to Part 5, add paragraph 88 to read as follows:

### **Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act**

88. The DHS/CBP-027 Customs Broker Management System of Records consists of electronic and paper records and will be used by DHS and its components. DHS/CBP Customs Broker Management System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including, but not limited to the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; and national security and intelligence activities. DHS/CBP-027 Customs Broker Management System of Records maintains information about individuals, associations, corporations, or partnerships to administer the Customs Broker License Exam, determine suitability for providing an individual a Customs Broker

license, and determine whether a licensed Customs Broker continues to meet the eligibility requirements to maintain a Customs Broker license.

The Secretary of Homeland Security has exempted this system pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Additionally, the Secretary has exempted this system pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

- (a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.
- (b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to



avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities when weighing and evaluating all available information. Further, permitting amendment to records after an investigation has been completed could impose administrative burdens on investigators. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.
- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.
- (f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of

records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(i) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Lynn P. Dupree,  
Chief Privacy Officer,  
Department of Homeland Security.

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